

## § 266.125

## 24 CFR Ch. II (4–1–12 Edition)

(1) Reveal in its application for participation in the program all the information required by this part;

(2) Notify HUD in a timely manner of any pending or actual changes that would adversely affect HFA operations or financial status;

(3) Comply with all eligibility requirements for participation in the program;

(4) Issue debentures in the event of an initial claim payment by HUD, or to reimburse HUD for payment of a claim;

(5) Maintain its top tier designation or overall rating of “A” on general obligation bonds (or if such designation or rating is lost, comply with paragraph (e)(6) of this section);

(6) Establish and maintain a dedicated account, if required, or meet other financial obligations under this program;

(7) Perform underwriting, insurance of advances, cost certification, management, servicing or property disposition functions in a prudent and acceptable manner based on the standards incorporated by reference into the Risk-sharing Agreement;

(8) Submit financial and other reports required by this part;

(9) Comply with any regulatory requirement or with the Risk-Sharing Agreement;

(10) Maintain any other standards HUD may establish for participation in this program;

(11) Enforce the regulatory agreement provisions with respect to individual projects;

(12) Maintain a default ratio acceptable to HUD relative to the HFA's own portfolio and the defaults experienced under this part by other program participants;

(13) Consider adequately special risk circumstances without compensating for the higher risks of such transactions (*e.g.*, high loan-to-value ratios in areas with high vacancy or default rates); or

(14) Remit mortgage insurance premiums on a timely basis or failure to refund or credit mortgagor's accounts with overpaid mortgage insurance premiums.

### § 266.125 Scope and nature of sanctions.

(a) *Actions by Designated Office.* Depending on the nature and extent of the noncompliance with the requirements of this part, the Designated Office may take any of the following actions:

(1) Require that the HFA execute a trust agreement, establish a trust account in accordance with such agreement, and fund such account which may be drawn upon by HUD for purposes of meeting the HFA's risk-sharing obligations;

(2) Require the HFA to assume a higher portion of risk for the subject and future mortgages;

(3) Recommend to the Commissioner that the HFA be required to contract its loan servicing or property disposition functions to a third party;

(4) Recommend to the Commissioner that the mortgage insurance be terminated in cases of fraud or material misrepresentation by the HFA, or transfer of interest in an insured mortgage or assignment of the mortgage not in accord with the requirements of this part;

(5) Recommend to the Commissioner that approval for the HFA to participate in the program be suspended or withdrawn;

(6) Recommend to the Commissioner that the HFA's mortgagee approval be withdrawn pursuant to 24 CFR part 25 and/or that penalties be imposed pursuant to 24 CFR part 30;

(7) Require additional financial or other reports as may be necessary to monitor the activities of the HFA more closely.

(b) *Actions by Headquarters.* HUD Headquarters may impose any of the sanctions set forth or recommended in paragraph (a) of this section based upon its responsibilities for monitoring and overall program oversight.

(c) *Effect of suspension or withdrawal.* A suspension or withdrawal action will not affect any mortgage insurance endorsement in effect on the date of the suspension or withdrawal action.

(d) *HFA right to informal hearing.* (1) Any sanction imposed by a Designated Office in writing will be immediately effective, will state the grounds for the action, and provide for the HFA's right

to an informal hearing before the Designated Office Representative or his or her designee in the Designated Office. The HFA may request an informal hearing within 10 working days of receipt of the suspension or withdrawal action and the Designated Office shall give the HFA an opportunity to be heard within 10 working days of receipt of the HFA's request. The HFA may be represented by counsel. The Designated Office Representative, or his or her designee, will advise the HFA in writing of the decision within 10 working days of the informal hearing, which decision will constitute final HUD action.

(2) Sanctions imposed by Headquarters will be handled in a similar manner, except that the informal hearing shall be before the Commissioner or his or her designee.

#### § 266.130 Reinsurance.

Reinsurance will be permitted for the portion of the HFA risk, subject to the following requirements:

- (a) Neither HUD's nor the HFA's position shall be subordinated;
- (b) The reinsurance may not be used to reduce any reserve or fund balance requirements; and
- (c) Such reinsurance does not incur an obligation to the Federal Government.

### Subpart C—Program Requirements

#### § 266.200 Eligible projects.

(a) *Minimum project size.* Projects insured under this part must consist of five or more rental dwelling units (including cooperative dwelling units) on one site. The site may consist of two or more non-contiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management. The units may be detached, semi-detached, row houses, multifamily structures, or mobile home parks (exclusive of the mobile homes).

(b) *New construction or substantial rehabilitation.* Insurance under this part shall be for the purpose of financing the new construction or substantial rehabilitation of projects meeting the

other requirements of this part as follows:

(1) *New construction* occurs when all project and construction elements are installed as part of the work.

(2) *Substantial rehabilitation* is any combination of the following work to the existing facilities of a project that aggregates to at least 15 percent of project's value after the rehabilitation and that results in material improvement of the project's economic life, liveability, marketability, and profitability: Replacement, alteration and/or modernization of building spaces, long-lived building or mechanical system components, or project facilities. Substantial rehabilitation may include but not consist solely of any combination of: minor repairs, replacement of short-lived building or mechanical system components, cosmetic work, or new project additions.

(c) *Existing projects.* Financing of existing properties without substantial rehabilitation is allowed.

(1) If an existing multifamily project is being acquired and HUD insurance under this part will be used to facilitate the acquisition of projects to increase the supply of affordable housing, such acquisitions are permissible if the HUD insured mortgage does not exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs as determined by the Commissioner.

(2) If the property is subject to an HFA-financed loan to be refinanced and such refinancing will result in the preservation of affordable housing, refinancing of these properties is permissible if project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months, and the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested. The HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, the cost of repairs and reasonable transaction